

13.07.2021
Court No.1
Item No.1 to 9
AP/ss

WPA(P) 142 of 2021
With
CAN 1 of 2021
With
CAN 3 of 2021
Susmita Saha Dutta
Vs.
The Union of India and Ors.

With
WPA(P) 143 of 2021
With
CAN 2 of 2021
Anindya Sundar Das
Vs.
Union of India and Ors.

With
WPA(P) 144 of 2021
With
CAN 2 of 2021
With
CAN 3 of 2021
Priyanka Tibrewal
Vs.
The State of West Bengal and Ors.

With
WPA(P) 145 of 2021
With
CAN 2 of 2021
Pradipta Arjun
Vs.
Union of India and Ors.

With
WPA(P) 146 of 2021
Smt. Aparajita Mitra
Vs.
The Union of India and Ors.

With
WPA(P) 147 of 2021
With
CAN 2 of 2021
Kuntal Mojumder
Vs.
Union of India and Ors.

With
WPA(P) 148 of 2021
With
CAN 1 of 2021

**With
CAN 3 of 2021
Susheel Kumar Pandey
Vs.
State of West Bengal and Ors.**

**With
WPA(P) 149 of 2021
With
CAN 2 of 2021
With
CAN 3 of 2021
Marufa Bibi and Ors.
Vs.
State of West Bengal and Ors.**

**With
WPA(P) 167 of 2021
With
CAN 2 of 2021
Kashinath Biswas
Vs.
Union of India and Ors.**

(Through Video Conference)

Mr. Mahesh Jethmalani, Senior Advocate with
M/s. Dhiraj Kumar Trivedi, Ravi Sharma, Debu Choudhury
and S. Mukherjee, Advocates (Through VC)
..for the Petitioner in WPA(P) 145 of 2021.

Mr. Bikash Ranjan Bhattacharya, Senior Advocate with
Mr. Samim Ahmed and
Ms. Saloni Bhattacharya (Through VC)
... for the Petitioner in WPA(P) 149 of 2021.

Mr. Bikash Ranjan Bhattacharya, Senior Advocate with
M/s Uday Sankar Chattopadhyay, Debapriya Samanta,
Pronoy Basak and Santanu Maji, Advocates (Through VC)
..for the Petitioner in WPA(P) 143 of 2021.

Ms. Priyanka Tibrewal, (in person) and
Mr. Abhinabha Chatterjee, Advocate (Through VC)
... Petitioner in WPA(P) 144 of 2021.

M/s. Rabi Sankar Chattopadhyay, Uday Sankar
Chattopadhyay, Suman Sankar Chattopadhyay, Sayan
Chattopadhyay, Santanu Maji, Soumen Banerjee, Ms. Smriti
Das and Ms. Payel Shome, Advocates (Present in Court)
... Petitioner in WPA(P) 167 of 2021.

Mr. Sukanta Ghosh, Advocate (Through VC)
..for the Petitioner in WPA(P) 146 of 2021.

M/s. J. Sai Deepak and
Rishav Kumar Singh, Advocates (Through VC)
..for the Petitioner in WPA(P) 148 of 2021.

Mr. Kapil Sibal, Senior Advocate with
Mr. Amit Kumar Nag, Advocate
..for Rashid Munir Khan.

Mr. Kishore Datta, Advocate General with
Mr. Sayan Sinha Advocate (Through VC)
..for the State.

Mr. Y.J. Dastoor, Additional Solicitor General with
M/s. Phiroze Edulji and Bhaskar Prosad Banerjee, Advocates
(Through VC)
..for the Union of India.

Mr. Subir Sanyal, Advocate and
Ms. Sumouli Sarkar, Advocate (Through VC)
..for the NHRC.

M/s. Sidhant Kumar, Manyaa Chandok, Dipayan Chaudhury
and Suvrodal Choudhury, Advocates (Through VC)
..for the ECI.

Vide order dated July 02, 2021 this Court directed that second autopsy of deceased Abhijit Sarkar, whose dead body was lying in hospital be undertaken by a team of doctors in the Command Hospital, Kolkata.

Today, Mr. Y.J. Dastoor, learned Additional Solicitor General of India has apprised the Court that autopsy of the deceased has been conducted and report is being prepared. The same shall be submitted in Court in a sealed cover.

He further submitted that the brother of the deceased expressed his inability to identify the body on account of its bad condition. Sample for DNA analysis of the deceased has been taken to confirm the identity of the body. In case the matching is allowed with the DNA of the brother of the deceased, the issue may be resolved.

At this stage, Mr. Mahesh Jethmalani, learned Senior Counsel appearing for the Biswajit Sarkar, brother of the deceased on instruction from his counsel in the Supreme Court submitted that he is ready to give his sample for DNA matching with the deceased.

In view of the aforesaid stand taken by Mr. Mahesh Jethmalani, learned Senior Counsel, let samples for DNA analysis of Biswajit Sarkar be taken at the Command Hospital on July 15, 2021 at 11 A.M. Biswajit Sarkar shall carry his Aadhar Card at the time of giving his sample.

At this stage, Mr. Kishore Datta, learned Advocate General requested that investigating officer should be allowed to present at the time of taking sample of Mr. Biswajit Sarkar at the Command Hospital to which serious objection has been raised by Mr. Jethmalani, learned senior counsel.

We don't consider that presence of investigating officer is required as sample of Biswajit Sarkar has to be taken in the Command Hospital. They shall ensure his identify before taking the sample and that both the samples are sent to the Director, CFSL, Kolkata for analysis.

Director, CFSL, Kolkata is directed to conduct DNA analysis of both the samples at the earliest on priority basis and submit a report to this Court in a sealed cover within one week.

The body of the deceased be shifted back to the Hospital Mortuary from where it was taken to the Command Hospital, Kolkata. It shall be retained in safe condition until further order is passed by this Court.

The committee constituted by this Court vide order dated June 18, 2021 has submitted five sets of report in separate sealed covers along with annexures. The same was opened and has been taken on record.

Soft copies of the report along with annexures be supplied by the counsel for the NHRC to the learned Advocate General, the learned counsel for the petitioners, the learned counsel for the Election Commission of India and also to Mr. Dastoor, learned Additional Solicitor General of India.

Affidavit of Rashid Munir Khan, Deputy Commissioner of Police, South Suburban Division, Kolkata has been filed in response to the notice issued to him to show cause why proceedings for contempt be not initiated against him. The same is taken on record.

Let the soft copy thereof be supplied to the learned counsel for the petitioners, the learned counsel appearing for the National Human Rights Commission and the Additional Solicitor General, who may file their response to the same, if required.

In Re: WPA(P) 144 of 2021

Supplementary affidavit filed by the petitioner in Court is taken on record. It is stated that copy thereof has been served in the office of the learned Advocate General. However, another copy may be supplied to his office through e-mail.

Adjourned to July 22, 2021 for arguments.

A copy of this order be sent to Director Command Hospital, Kolkata and Director, CFSL, Kolkata by the Registrar General of this Court.

[Rajesh Bindal, C.J.(A)]

[I.P. Mukerji, J.]

[Harish Tandon, J.]

[Soumen Sen, J.]

[Subrata Talukdar, J.]